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THIS DISPOSITION IS
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Paper No. 68
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Star Networks, Inc., substituted for Internet, Inc.
v.
Sprint Communications Company L.P.

Cancellation No. 22,034
and
Opposition No. 99,949

Request For Reconsideration

John K. Uilkema of Thelen, Reid & Priest LLP for Star
Networks, Inc., substituted for Internet, Inc.

Robert D. Hovey of Hovey, Williams, Timmons & Collins for
Sprint Communications Company L.P.

Before Hairston, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

The Board, in its decision, dated December 28, 2001,
denied the petition to cancel and dismissed the
opposition by plaintiff (hereinafter petitioner) against
defendant's (hereinafter respondent) registrations of the
mark THE MOST and THE MOST WORLDWIDE and its application
for the mark THE MOST FOR BUSINESS. Petitioner, on

February 25, 2002 (via certificate of mailing) timely filed a request for reconsideration.¹ Respondent filed a response thereto.

According to petitioner, the Board erred in that our decision is based on a comparison of the parties' actual businesses, rather than on a comparison of the broad services of respondent with those of petitioner, as identified in the respective registrations and application. Specifically, petitioner notes the Board's statement (decision, p. 35) that "[d]ata transfer over telephone lines may technically be a form of 'telecommunications,' in the broadest possible sense of that word." Based on this statement, petitioner concludes that the Board found the identifications in petitioner's registrations describing banking services as "electronic funds transfer services and electronic processing and transmission of point of sale payment data between merchants and customers accounts" and business management services as "computerized management of payment systems, transfer of value systems and supporting data related thereto" to define a form of telecommunications. However, according to petitioner,

¹ Petitioner's consented motion to extend its time to file a request for reconsideration was approved by the Board on February 25, 2002.

the Board erroneously concluded that the "technical form of 'telecommunications' defined in petitioner's registrations is not self-sustaining and requires something more" "that, to prevail, petitioner must establish that it offers telecommunications services separate from its banking and financial services" (petitioner's request for reconsideration, pp. 6-7). Finally, petitioner contends that petitioner should prevail because one of respondent's registrations is broadly set forth as "telecommunication services"; and that the decision must be based solely on the identifications of services set forth in the registrations and application, regardless of extrinsic evidence of the parties' use.²

Respondent asserts that petitioner took a single sentence out of context from the totality of the Board decision, and extrapolated it into a "fallacious"

² Petitioner specifically argued two other matters: (i) "[n]or is it relevant that petitioner may not separately be offering telecommunication services"; and (ii) "[e]ssentially what the Board has done is to give the broadly defined 'telecommunication' services of the respondent a definition requiring that the services be offered to the general public, as such, and then to require that petitioner establish that it is so using its marks." (Request for reconsideration, p. 7.) We did not require that petitioner establish the offering of its services to the general public (although services must be offered to the benefit of others rather than merely facilitating the conduct of one's own business); and we generally disagree

conclusion that petitioner is in the telecommunications business. Respondent further argues that the Board clearly found that petitioner is not in the "telecommunications" business; and that petitioner's electronic funds transfer services (and the other services petitioner contends include telecommunications services) do not amount to a telecommunications service as shown by the record.

We have carefully reviewed this matter, and we remain of the opinion that petitioner did not establish that its services, as identified, encompass "telecommunication services"; that petitioner even offers "telecommunications services"; and/or that petitioner's involved identified services are related to those of respondent. Petitioner is attributing an unacceptably broad and expansive interpretation to all of its identifications of services. A reasonable reading of petitioner's involved identifications of services (which all begin with one of the following opening phrases: "banking services, namely, . . .," or "financial services, namely. . .," or "business management services, namely, . . .") makes it clear that those services do not encompass "telecommunications services."

that these matters are irrelevant with regard to the question of

With regard to our statement (on page 35 of our decision) about data transfer over telephone lines possibly technically being a form of telecommunications, we simply meant that it was not clear on this record. The evidence did not support petitioner's position, and the recitations were not clear enough on the face of the identifications of services. Therefore, we went beyond the identifications of services³ to ascertain if we could find for petitioner, and we found that we could not do so because it was not reasonable to read into the wording of petitioner's identifications of services the meanings petitioner sought to attribute to them. Petitioner's problem in these consolidated cases relates to a failure of proof by petitioner, as the party with the burden of proving its case. Our decision made clear that the record was filled with vague and ambiguous testimony and evidence from petitioner, and that petitioner had not proven the relatedness of the involved services, as identified.

Inasmuch as the Board finds no error in its December 28, 2001 decision, petitioner's request for reconsideration is denied. The decision previously

the registrability of marks. See TMEP §1301.

³ See *In re Trackmobile Inc.*, 15 USPQ2d 1152 (TTAB 1990).

Cancellation No. 22034 & Opposition No. 99949

issued by the Board stands; and the petition to cancel is denied and the opposition is dismissed.